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Chambers of Vincent L. Briccetti

6-5-23 DV

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AASIM MCPHEE,	:	
Plaintiff,	:	
v.	:	ORDER
	:	
SGT. N. LAINO, STATE OF NEW YORK, and	:	22 CV 10095 (VB)
JOHN/JANE DOES 1–100,	:	
Defendants.	:	

6-5-23

On May 10, 2023, plaintiff, proceeding pro se and in forma pauperis, filed an amended complaint dated May 6, 2023, which added defendants the State of New York and John/Jane Doe 1–100. (Doc. #16).

By Order dated May 11, 2023, the Court (i) granted plaintiff's request to file an amended complaint; and (ii) directed defense counsel to identify any corrections officers referred to in the amended complaint and to provide addresses at which they could be served, pursuant to Valentin v. Dinkens, 121 F.3d 72 (2d Cir. 1997). (Doc. #17).

On June 2, 2023, the Court received a letter from defense counsel identifying Corrections Officers Ileshema Thomas, Curtis Egloff, Brian Collins, Latanya Taylor, Jacqueline Webber, Brendan Haberin, and Melissa Cuomo as being involved in an incident involving plaintiff on October 3, 2022, and providing a service address for them. (Doc. #18).

Accordingly, it is HEREBY ORDERED:

1. By July 5, 2023, plaintiff shall file a second amended complaint. The second amended complaint shall list the full names of all defendants, including Corrections Officers Ileshema Thomas, Curtis Egloff, Brian Collins, Latanya Taylor, Jacqueline Webber, Brendan Haberin, and Melissa Cuomo. Plaintiff shall use the second amended complaint form attached to this Order. The second amended complaint will completely replace, not merely supplement, the amended complaint. Therefore, plaintiff must include in the second amended complaint all information necessary for his claims.

2. Because plaintiff is proceeding in forma pauperis, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. Once the Court receives and screens the second amended complaint, it will issue an appropriate order directing the Clerk of Court to issue summonses for the newly identified defendants and to deliver to the U.S. Marshals all materials necessary to effect service. To be clear, plaintiff does not need to do anything to effect service on defendants.

3. Plaintiff's service deadline pursuant to Fed. R. Civ. P. 4(m) is STAYED pending further Court Order. Once the Court receives the second amended complaint, it will set a service deadline pursuant to Fed. R. Civ. P. 4(m).

4. The time for all parties to answer, move, or otherwise respond to the amended complaint remains STAYED pending further Court Order.

5. Pursuant to the Court's Order dated May 11, 2023 (Doc. #17), defendant Laino's motion to dismiss the complaint was terminated as moot. (Doc. #12). The Clerk is directed to terminate Laino's motion. (Id.).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

Chambers will mail a copy of this Order to plaintiff at the address on the docket.

Dated: June 5, 2023
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

No. 22 CV 10095 (VB)

(To be filled out by Clerk's Office)

-against-

**SECOND AMENDED
COMPLAINT**
(Prisoner)

Do you want a jury trial?

Yes No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

Violation of my federal constitutional rights

Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name	Middle Initial	Last Name
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State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City	State	Zip Code
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III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

Pretrial detainee

Civilly committed detainee

Immigration detainee

Convicted and sentenced prisoner

Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence: _____

Date(s) of occurrence: _____

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated	Plaintiff's Signature	
First Name	Middle Initial	Last Name
Prison Address		
County, City	State	Zip Code
Date on which I am delivering this complaint to prison authorities for mailing:		